IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

C.A. NO.918 OF 2007
IN
FIRST APPEAL NO.249 OF 2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

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Mr.J.P.Thakkar for the appellant.

Mr.J.J.Xavier for the B.M.C.

CORAM : ANOOP V. MOHTA,J.

DATED : 9th July, 2007

P.C.

The appellant has filed this application under Order 41 Rule 27 of C.P.C. for production of additional evidence. The document is nothing but the assessment bill of the house with garage in question of one Orekumar Champaklal Dhabawala. As per this document, the property in question has been in existence even prior to 1961-62. This original assessment bill was not available at the time of the trial. The landlord-Kishore Dhabawala has also filed affidavit

in the trial court in the year 1999 stating that the suit building is of 80 years old. The zerox copy of this document was filed on record, but for want of production of original, the same could not be proved. This assessment bill dated 23rd December 1996 further supports the submission/the case of the plaintiff that the suit property has been in existence prior to 1961-62.

The notice as issued by the Municipal Corporation under Section 351 for demolition of the property need to be respected normally. In the present case, admittedly this assessment bill is the respondent-corporation's document. The plaintiff failed to support the case of an existence of the structure since 1961-62 only because the original was not available at that time. But the fact that this is the Corporation's document just cannot be overlooked. The document being the Corporation's document and

considering the nature of dispute as raised and if plaintiff able to demonstrate the case that the suit property has been in existence since 1961-62, this document definitely play a very important role.

In view of this, there is a case made out by the plaintiff as contemplated under Order 41 Rule 27 of C.P.C. This application is therefore allowed in terms of prayer (a).

C.A. stands disposed of accordingly.

[ANOOP V. MOHTA,J.]